RECEIVED
NOV 12 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF ONE CALL COMMUNICATIONS, INC.

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006-1888
(202) 887-1500

Counsel for One Call Communications, Inc.

November 12, 1999

TABLE OF CONTENTS

Page

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Low-Volume Long Distance Users	)	CC Docket No. 99-249
	)	
Federal-State Joint Board On Universal Service	)	CC Docket No. 96-45
	)	

COMMENTS OF ONE CALL COMMUNICATIONS, INC.

I. INTRODUCTION AND SUMMARY

One Call Communications, Inc. d/b/a Opticom ("Opticom"), through its undersigned counsel, hereby responds to the Notice of Proposed Rulemaking ("NPRM") released by the Commission in the above-captioned dockets requesting comments on the interstate universal service and access reform plan ("Proposal") submitted by the Coalition for Affordable Local and Long Distance Services ("CALLS" or "Coalition").[1] Opticom urges the Commission, in the event that it adopts the CALLS Proposal, to apply, in the case of payphones, the common line cost recovery mechanism set forth in the CALLS Proposal for Single Line Business ("SLB") subscriber lines. Under such a treatment, the presubscribed interexchange carrier charge ("PICC") now assessed on payphone lines would be folded into the subscriber line charge ("SLC") applicable thereto. Such a common line cost recovery mechanism for payphones would address, in a manner consistent with the economic cost recovery goals of the *Access Charge Reform Order*[2] and the CALLS Proposal, all of the anomalies that have arisen from the application of the PICC to payphones.

[1] *Access Charge Reform, et al.*, CC Docket No. 96-262, *et al.*, Notice of Proposed Rulemaking, FCC 99-235 (Sept. 15, 1999).

[2] *See Access Charge Reform*, 12 FCC Rcd 15982 (1997).

The Commission assumed in the *Access Charge Reform Order* that the reduction in usage-based access charges resulting in part from imposition of a flat-rated PICC would enable presubscribed interexchange carriers ("PICs") to reduce long distance rates and thereby increase direct dial long distance calling, and that the benefits to PICs from such access charge reductions would outweigh the burden of the PICC as calling volumes increased. Those assumptions do not apply to payphones, however, because rate changes are unlikely to have any significant impact on transient long distance calling, payphone calling volumes are so low that total monthly long distance revenue is often less than the PICC at many payphones, and long distance revenue at many payphones is often divided between two PICs. Moreover, a payphone PIC typically has no relationship with the transient payphone end users that it serves. The PICC cost recovery envisioned in the *Access Charge Reform Order* -- in which the PIC recovers the PICC from its subscriber, or where there is no PIC, in which the PICC is imposed on the subscriber directly -- thus has no application or relevance to the payphone context.

The CALLS Proposal offers a mechanism to rectify this irrational payphone common line cost recovery by combining the SLB SLC and PICC into a new SLC applied to SLB lines. According to the CALLS Proposal, this will rationalize the access charge regime by recovering common line costs consistently with the manner in which they are incurred -- namely, on a per-line basis directly from the cost causer, *i.e.,* the subscriber. Applying the same mechanism to payphones and folding the PICC now assessed on such lines into the SLC would similarly rationalize payphone common line cost recovery. The payphone provider is the payphone common line subscriber and cost-causer and, partially as a result of payphone compensation under 47 U.S.C. § 276(b)(1)(A), derives the greatest benefit from the payphone common line. The payphone provider thus is the appropriate party to bear the PICC. In short, the CALLS rationale for combining the SLB SLC and PICC into a new SLB SLC -- that it would recover SLB common line costs directly from the cost causer -- applies with even greater force to payphone lines, since the payphone PICC currently is even less likely to be borne ultimately by the cost causer than the PICC for other types of subscriber lines.

Such an approach would not alter the CALLS Proposal in any material fashion, would be consistent with current access charge rules and would further the Commission's and Coalition's shared goal of recovering costs in an economically rational manner. It should be noted that Opticom's concern here is with the manner in which payphone common line costs are to be recovered under the CALLS Proposal, not the amount that should be recovered. Accordingly, in the event that the Commission adopts the CALLS Proposal and applies it to payphones in the manner advocated here, Opticom takes no position on the level of the SLC that should be assessed against payphone lines.

II. BACKGROUND

Opticom, a division of One Call Communications, Inc., is an operator service provider ("OSP") to over 150,000 payphones across the United States, and its operations are substantially affected by the application of PICCs to payphones. Unlike other subscriber lines, payphone lines are served by two separate categories of PICs: one providing "0+" services billed to third parties (*e.g.*, collect calls or calls billed to the caller's own telephone number); and one providing "1+" services (*e.g.*, coin calls). Opticom typically serves as the 0+ PIC at payphones provided by local exchange carriers ("LECs").[3]

As Opticom has explained in its comments on the *Payphone PICC Notice*,[4] since the PICC became effective, the payphone industry has been plagued by the implementation of a patchwork of varied and discriminatory practices, all reflecting the inappropriateness of such a cost recovery mechanism in the case of payphone lines. Anomalies have arisen in the application of the PICC to payphone lines largely because of two factors: the impracticality of recovering the PICC in the manner contemplated in the *Access Charge Reform Order,* especially in the case of LEC payphone 0+ PICs; and the dual role played by the LECs -- as both assessor

---

[3] In one region, however, Opticom is both the 0+ and the 1+ PIC for certain LEC payphones.

[4] FCC Public Notice, *Commission Seeks Comment on Specific Questions Related to Assessment of Prescribed Interexchange Carrier Charges on Public Payphone Lines*, CCB/CPD No. 98-34, DA 98-845 (May 4, 1998). *See* Comments of One Call Communications, Inc., *Assessment of Presubscribed Interexchange Carrier Charges on Public Payphone Lines*, CCB/CPD No. 98-34 (May 26, 1998)("One Call *Payphone PICC* Comments").

of the PICC and payphone provider -- in the case of LEC payphones, which constitute the great majority of payphones in the United States.

The inappropriateness of assessing the PICC on payphone PICs results from the unique nature of the payphone market. The most significant distinguishing factor is the transient nature of long distance calling at payphones. Specifically, the Commission assumed that the restructuring of access charges and imposition of a flat-rate PICC in the *Access Charge Reform Order* would result in reduced usage-based access charges, which would enable the typical PIC to reduce long distance rates and thereby increase business and residential direct dial long distance calling.[5] For most PICs, this restructuring creates a "virtuous cycle," in which usage-based access charge reductions make up for the imposition of the PICC as long distance traffic increases, thus encouraging PICs to increase demand by further reducing long distance rates and thereby to reap greater benefits from the lower usage-based access rates. PICs thus would be able to recover the PICC by passing it on to the end user, while reducing long distance rates overall.[6]

These assumptions are simply not true for payphones, however, for several reasons. First, rate changes are unlikely to have any particular impact on transient long distance calling volume. Payphone PICs thus are not in a position to increase usage, thereby covering the PICC, by offering attractive rates. This problem is aggravated by the fact that there are split PICs -- a 1+ PIC and a 0+ PIC -- at many payphones; thus, a single PIC typically does not handle all long distance calls from a given payphone. The assessment of a PICC on one of the PICs serving a payphone effectively forces a carrier providing a fraction of the interexchange services for that telephone to subsidize all other long distance calls made from that line. Moreover, call volumes for a given PIC at a typical payphone are so low that the total monthly revenue for a PIC from any particular payphone is often less than the PICC. This is especially true for 0+ PICs, which have lower call volumes on average than 1+ PICs.[7] Payphone PICs thus not only are stuck with

[5] *See Access Charge Reform Order*, 12 FCC Rcd at 15990.

[6] *Id.* at 15990, 16008, 16015, 16019-20, 16026.

[7] *See* One Call *Payphone PICC* Comments at 5 and Exh. A.

new flat-rate common line charges that they cannot pass on, but they also do not enjoy the benefits of per-minute access charge reductions that were expected for all interexchange carriers ("IXCs"), since those reductions generate significant benefits for IXCs only at higher long distance calling volumes.

Second, even apart from low call volumes, it is impractical for payphone PICs, especially 0+ PICs, to recover the PICC from end users effectively. Unlike the situation with the typical presubscribed telephone line, the "subscriber" -- the payphone provider[8] -- is generally not the end user. The end users are transient users, with whom the PIC has no relationship. There is no simple or clear way to impose the PICC directly on them, as the Commission has done in the case of other types of subscriber lines where no PIC has been chosen. The 0+ PIC also typically has no business relationship with the payphone provider, because it is the location provider, rather than the payphone provider, that generally has chosen the 0+ PIC, and since the 0+ PIC bills its per-call charges to parties other than the payphone provider (*e.g.*, to the call recipient, in the case of a collect call). The neat PICC cost recovery envisioned in the *Access Charge Reform Order* -- in which the PIC recovers the PICC from its subscriber or, where there is no PIC, in which the PICC is imposed on the subscriber directly -- simply has no application or relevance to the payphone context.

Aggravating these inherent cost recovery difficulties is the LECs' discriminatory practice of assessing the PICC on the 1+ PICs for private payphones (*i.e.*, those provided by independent payphone providers), while assessing it on the 0+ PICs for the LECs' own payphones, even though most LEC payphones are also served by a 1+ PIC (typically, AT&T). Unlike the typical LEC payphone 0+ PIC, which has no business relationship with the payphone provider -- the LEC payphone unit -- a private payphone 1+ PIC, which is chosen by the payphone provider in the same manner as a subscriber usually selects a PIC, can easily pass the PICC on to the

[8] *See, e.g.*, Reply Comments of Bell Atlantic at 3 n.4, *Assessment of Presubscribed Interexchange Carrier Charge On Public Pay Telephone Lines*, CCB/CPD Docket No. 98-34 (June 2, 1998)(characterizing the payphone provider as the subscriber in the case of a payphone).

payphone provider in its monthly bill. The LECs' discriminatory imposition of the PICC on payphone PICs thus burdens LEC payphone 0+ PICs disproportionately.[9]

Accordingly, Opticom proposed in its *Payphone PICC* Comments that the PICC be imposed on the payphone provider directly, which, in the case of LEC payphones, would require that it be imputed to the LEC payphone unit as a subscriber. Opticom explained that such treatment would rectify all of the anomalies arising from the assessment of the PICC on payphone lines and would equalize the treatment of LEC and private payphones, thereby ending the discriminatory and anticompetitive impact of the LECs' PICC assessment practices.[10] The Commission has not yet acted on the issues raised in the *Payphone PICC Notice*.

III. THE CALLS PROPOSAL

The NPRM seeks comment on the CALLS Proposal, an access charge reform and universal service plan negotiated among certain LECs and IXCs, which would apply to price cap incumbent LECs that elect to participate. The plan, *inter alia*, would revise the current system of common line charges by combining existing carrier and subscriber charges into one flat-rated SLC and would provide for limited deaveraging of those charges under specific conditions. Specifically, the Residential and SLB SLC and PICC are combined into a new single SLC, which increases in yearly installments until January 1, 2003. For multiline business ("MLB") lines, the SLC and PICC are not combined, and the MLB PICC will continue to be charged by the LEC to the PIC. It is also significant, with respect to the application of the CALLS Proposal to payphones, that traffic sensitive access charges are scheduled to rapidly fall roughly in half. CALLS requests that the plan be adopted by the Commission without modification as an integrated package and implemented for the five-year period beginning in January 2000.

According to the Coalition, these changes will rationalize the access charge regime by recovering common line costs consistently with the manner in which they are incurred -- *i.e.*, on

---

[9] For the same reason, the LECs' PICC assessment practices also happen to favor their own payphone operations at the expense of independent payphone providers, since the latter end up picking up the PICC passed on by the 1+ PIC.

[10] *See* One Call *Payphone PICC* Comments at 3-5.

a per-line basis from the subscriber. It is far more efficient to recover as much of the total common line costs as possible from the SLC, rather than through other charges, which are passed on only indirectly to the end user. The Coalition concludes that recovery of more of the total common line costs from the SLC simply continues the rationalizing of common line cost recovery that was begun in the *Access Charge Reform Order* through the SLC and PICC. The reduction in per minute access charges will allow IXCs to reduce long distance rates further and enhance competition.[11]

IV. APPLICATION TO PAYPHONE LINES OF THE MECHANISM FOR SINGLE LINE BUSINESS LINES UNDER THE CALLS PROPOSAL WILL FURTHER THE COMMISSION'S AND THE COALITION'S SHARED COMMON LINE COST RECOVERY GOALS

A. Folding the Current PICC on Payphone Lines Into the SLC Would Remedy the Inefficiencies and Discrimination Arising From the Imposition of the PICC on Payphone Lines

The CALLS Proposal provides an opportunity to correct the irrational and inefficient recovery of common line costs resulting from the application of the PICC to payphone lines in a way that furthers the goals of access charge reform, as expressed by the Commission in the *Access Charge Reform Order* and in the CALLS Proposal, in a nondiscriminatory way. The *Access Charge Reform Order* explicitly contemplated that PICs would recover the PICC by passing it on to end users and that declining per minute access charges would leave PICs better off, on balance.[12] As explained above, however, that simply does not happen in the case of payphone PICs. The disproportionate and economically irrational application of the PICC to payphones is compounded by the discriminatory assessment of the PICC discussed above and the absence of any business relationship between the 0+ PIC and the "cost causer" -- the payphone provider -- in the case of LEC payphones, which would make it difficult for a LEC payphone 0+ PIC to pass along the PICC even if call volumes were higher and demand responded to rate reductions.

---

[11] *See* Memorandum in Support of the Coalition for Affordable Local and Long Distance Service Plan at 12-18, 38-40, NPRM App. C.

[12] *Access Charge Reform Order*, 12 FCC Rcd at 16020, 16026.

All of these inefficiencies would be cured by applying the common line cost recovery mechanism for SLB lines in the CALLS Proposal to payphones and folding the PICC, now discriminatorily imposed on different categories of payphone PICs, into the SLC. The payphone provider is the payphone common line cost-causer, and the principles of cost causation underlying the *Access Charge Reform Order* and motivating the Coalition Proposal would be furthered if the payphone provider were to bear those costs directly. The payphone provider certainly reaps the greatest benefit from the payphone common line. Unlike any single payphone PIC, the payphone provider collects compensation for every long distance call completed from a payphone.[13] In the case of LEC payphones, the LECs collect not only dial-around compensation, in their roles as payphone providers, but also the usage-based access charges that LECs assess on every interexchange call. Heaping the PICC on top of those multiple revenue streams -- collected from PICs that do not have sufficient call volumes to benefit from lower usage-based access charges -- amounts to a bonanza for the LECs.[14]

As Opticom explained in its *Payphone PICC* comments, assessing the PICC on the payphone provider, rather than on the PIC, would effectively treat payphones like subscriber lines for which no PIC has been chosen under the current regulations. The *Access Charge Reform Order* permitted LECs to charge the PICC directly to the end user where no PIC was chosen in order to remove any incentive to "dial around" an IXC passing the PICC on to the end user in its long distance rates.[15] Thus, the Commission's intent was for IXCs to pass the PICC along to their customers in their rates, which were expected to decline as per-minute access charges declined.[16] That cost recovery mechanism, however, does not work as well in the case of the typical payphone PIC, which typically provides only a fraction of the interexchange service at any given payphone due to the frequency of dial-around calling and split PICs at payphones.

[13] *See* 47 U.S.C. § 276(b)(1)(A).

[14] To make matters worse, Ameritech charges payphone PICs not only the maximum possible PICC on interstate calls, but also an intrastate PICC and intraLATA PICC on intrastate interexchange and intrastate intraLATA toll calls, respectively, in Indiana.

[15] *Access Charge Reform Order*, 12 FCC Rcd at 16019-20.

[16] *Id.*

The payphone provider, by contrast, has contact with every user. Moreover, the payphone provider, as explained above, benefits from every long distance call completed from its payphones. Thus, as the primary beneficiary and the cost causer, the payphone owner is the appropriate party to bear the PICC, just as the subscriber to any other type of telephone is the appropriate party to bear the PICC, either indirectly through the PIC's long distance charges or, where there is no PIC, directly.

In short, the Coalition's rationale for folding the SLB PICC into the SLC -- *i.e.*, to recover all SLB common line costs directly from the cost causer -- applies with even greater force to payphone lines. Assuming that the Coalition is correct that the recovery of common line costs through the PICC is generally inefficient because it is only indirectly borne by the subscriber, such inefficiency is dwarfed by the utter irrationality of trying to recover payphone common line costs through the PICC, since the payphone PICC is so unlikely to be borne ultimately by the cost causer, as discussed above. If the Commission concludes that the CALLS Proposal should be adopted on its own terms for access services generally, therefore, the PICC now assessed against payphones should certainly be folded into the SLC assessed on payphone lines.

B. Application of the Cost Recovery Mechanism for SLB Lines to Payphones Would Not Violate Current Rules or Significantly Modify the CALLS Proposal

Whether or not the application of the common line cost recovery mechanism for SLB lines to payphones conforms to the Commission's current rules should not be dispositive in determining how payphones are treated under the CALLS Proposal, given that the latter would require a major revision of the access charge regime. If economic efficiency and the principles of cost causation would be furthered by such treatment, as Opticom believes has been demonstrated above, the Commission should treat payphones accordingly in promulgating such a regulatory overhaul, irrespective of the technical classification of payphone lines under Section 69.153 of the Commission's current rules, which sets forth how the PICC is applied. To the extent that other commenters or the Commission might be concerned on this point, however, it should be noted that the treatment of payphone lines proposed herein is entirely consistent with the Commission's current regulations.

It is significant, in construing Section 69.153, that this provision does not address payphones at all, unlike Section 69.152 of the Commission's rules, which sets forth how the SLC should be applied. Section 69.152(c) allows LECs to charge the SLC that is charged to MLB lines "for each subscriber line associated with a public telephone." Section 69.153 is roughly parallel to Section 69.152, except for the omission of any reference to "public telephone," or any type of payphone. The omission of such a reference in Section 69.153 and its inclusion in Section 69.152, which is otherwise roughly parallel, strongly suggests that the PICC was never intended to be applied to public telephones or any other payphones.[17] At the very least, the disparate treatment of public telephones in these parallel provisions certainly cannot be read as requiring the same treatment. Thus, it is not clear what level of PICC applies to payphones, or whether it should be applied at all, and there is no regulatory requirement that the application of the PICC necessarily follows the application of the SLC to payphones. There is certainly nothing in the *Access Charge Reform Order* requiring such parallel treatment for payphones.

Since Section 69.153 does not reference payphones, its application to payphones necessarily turns on other factors, such as whether the typical payphone is more similar to a SLB line or a MLB line. In many cases, there is only one payphone at a given location. More significantly, even where there is more than one payphone at a particular location, such payphones do not bear the *indicia* of MLB lines. Typically, each payphone is maintained as a stand-alone facility, with a separate line number that transmits an individual automatic number identification, and has a separate physical plant and dedicated line. Unlike the standard MLB situation, payphones have no direct inward dialing or shared use. Each payphone is typically billed as a separate individual business line for purposes of service order charges, CARE codes and record order changes and generally has a different billing cycle from that of other payphones

[17] *Cf. Russello v. United States*, 464 U.S. 16, 23 (1983)(where particular language included in one section of a statute but omitted in another section of the same act, it is presumed that such omission was intended).

maintained by the same payphone provider. Thus, nothing in the current access charge regime precludes the application to payphones of the access charge mechanism for SLB lines if good public policy requires such treatment. As explained above, such treatment is required to further the Commission's and the Coalition's access reform goals.[18]

The treatment of payphones proposed herein also would not require a significant modification of the CALLS Proposal. Treating payphones as SLB lines would not alter one comma in the CALLS Proposal; rather, Opticom is requesting that any order adopting the CALLS Proposal simply specify that it be applied to payphones in the manner described herein.

It may be, however, that, in the event that the Commission were to agree to Opticom's request, certain members of the Coalition would actually prefer that the CALLS Proposal be slightly modified so as to minimize the impact of Opticom's approach on the LECs' total common line cost recovery. Putting aside the issue of whether the LECs have been assessing the PICC on payphone lines correctly up to this point, it is not Opticom's intent in these comments necessarily to affect the LECs' total common line cost recovery from payphones or to diminish the level of total payphone common line cost recovery that is contemplated in the CALLS Proposal. Rather, it is the manner in which those common line costs are to be recovered that concerns Opticom. That such costs should be recovered entirely through the SLC, rather than through the SLC and PICC, however, does not necessarily determine at what level the new payphone SLC should be set. Accordingly, the Commission, in the event it adopts the CALLS Proposal and treats payphones in the manner advocated in these comments, might decide to modify the SLC that would otherwise be applied to payphones under the CALLS Proposal in order to minimize the impact of Opticom's approach on the LECs. Opticom takes no position on the level of the SLC that should be assessed against payphone lines under the CALLS Proposal.

[18] It should be noted that Opticom is advocating the application to payphones of the cost recovery mechanism for single line business lines only in the context of the CALLS Proposal. It is only by folding the PICC now assessed on payphone PICs into the SLC assessed on payphone providers that the principles of cost causation and economic efficiency will be furthered. Without that crucial aspect of the CALLS Proposal, the categorization of payphones might not have any effect on economic efficiency.

V. CONCLUSION

The CALLS Proposal provides a unique opportunity to ameliorate the tremendous damage that is being done to the operator service industry by the assessment of the PICC on payphone PICs, which has already driven at least one OSP out of business and threatens to force half a dozen others into bankruptcy. Because of the nature of payphone use and the realities of the payphone market, assessment of the PICC on payphone PICs, especially on LEC payphone 0+ PICs, is economically irrational and violates all of the cost recovery principles upon which the *Access Charge Reform Order* was based. Adoption of the CALLS Proposal would rectify all of these market inefficiencies if it were applied to payphones using the common line cost recovery mechanism set forth in the CALLS Proposal for SLB lines, and the PICC now assessed on payphone PICs were folded into the SLC assessed on payphone providers. Unlike a payphone PIC, the payphone provider benefits from every long distance call from a payphone and is in a much better position than the PIC to absorb or pass along these common line charges. If the CALLS Proposal were applied in this manner, Opticom would support it. Opticom could not support the CALLS Proposal, however, if payphones were excluded from the cost causative mechanism proposed therein for SLB lines.

Respectfully submitted,

By: ______________________

Cheryl A. Tritt
Frank W. Krogh
Morrison & Foerster LLP
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006-1888
(202) 887-1500

Counsel for One Call Communications, Inc.

November 12, 1999

CERTIFICATE OF SERVICE

I, James S. Bucholz, do hereby certify that the foregoing Comments were delivered, via hand delivery or first-class mail (*), this 12th day of November, 1999, to the following:

Mitchell F. Brecher*
Greenberg Traurig
1300 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

Wanda Harris
Competitive Pricing Division
445 Twelfth Street, S.W.
Fifth Floor
Washington, D.C. 20554

John T. Nakahata*
Harris Wiltshire & Grannis LLP
1200 Eighteenth Street, N.W.
Washington, D.C. 20036

James S. Bucholz

James S. Bucholz